

REMARKS

Applicants have not amended the claims in this response.

Claims 1-33 are currently pending in the application.

Claims Rejections – 35 USC § 102

Claims 1-4, 7, 9, 10, 13, and 14, are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,888,831 to Gautsch, (“Gautsch”).

This rejection is respectfully traversed.

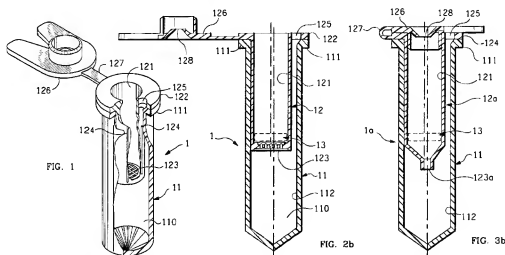
Of the claims rejected, claims 1 and 13 are independent, with the remaining claims dependent thereon.

Claim 1 recites among other things;
said inner container of said first container assembly being configured to define a first volume for said first container assembly, said inner container of said second container assembly being configured to define a second volume for said second container assembly, said second volume being less than said first volume.

Claim 13 recites among other things;
said second inner volume being less than said first inner volume by an amount substantially corresponding to a difference between said first and second volumes of liquid.

Applicants submit that Gautsch fails to disclose at least the claimed features of,
(a) the second volume being less than the first volume (of the inner containers).
(b) the second inner volume being less than the first inner volume by an amount substantially corresponding to a difference between the first and second volumes of liquid.

Gautsch discloses a plastic "miniprep" device for separating liquid samples including a first, sample, cylindrical container (12, 12a) having an inlet and an outlet opening between which a filter layer (13) is arranged, the outlet opening typically being connected to and enclosed by an outlet spout (123a), fitting within a cylindrical bore of a second, collecting, container (11) receiving the separated liquid discharged from the outlet spout (See Figs 1-3 shown below).



Gautsch is completely silent on the internal volume of either sample container (12, 12a) embodiment and fails to disclose that the internal volume of the inner container of a first container assembly can be different to the internal volume of the inner container of a second container assembly.

The Final Office Action of May 28, 2008 states "The Examiner agrees that that Gautsch is silent as to the numerical value of the volume of containers 12 and 12a. But the Examiner submits that the inner container 12 has an inherently smaller volume than the inner container 12a due to the removal of the spout element."

The Examiner appears to base this conclusion on a comparison of Figures 2b and 3b of Gautsch as the specification is completely silent as to the magnitude of the internal volume of either inner container (12, 12a) and ratio of internal volume between either inner container (12, 12a).

Section 2125 of the MPEP states:

“PROPORTIONS OF FEATURES IN A DRAWING ARE NOT EVIDENCE OF ACTUAL PROPORTIONS WHEN DRAWINGS ARE NOT TO SCALE”

When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000) (The disclosure gave no indication that the drawings were drawn to scale. “[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.”).

Gautsch fails to explicitly or inherently disclose the volumetric ratio of either inner container (12, 12a).

Applicant respectfully submits that the removal of the spout element therefore does not inherently result in a smaller volume for inner container 12.

The Final Office Action of May 28, 2008 further states “The Examiner also admits that Figures 2B and 3B show two different embodiments of the device. The Examiner *additionally contends, however, that both of those embodiments are included in the well array disclosed by Gautsch* in column 8, line 52 - column 12.”

Gautsch fails to disclose that the two different alternative embodiments (as shown in Figures 2b and 3b) are included in a single well array.

Thus Gautsch fails to anticipate claims 1 and 13.

For these reasons, Applicants submit that claim 1, and dependent claims 2-4, 7, 9, and 10, and claim 13 and dependent claim 14, are not anticipated by the cited reference.

Nor would Gautsch render claims 1 and 13 obvious.

There is no suggestion in Gautsch whatsoever that the internal volume of the inner container of a first container assembly can be different to the internal volume of the inner container of a second container assembly.

Furthermore, there is no suggestion in Gautsch to include both of the alternative embodiments (as shown in Figures 2b and 3b) in a single well array.

In addition, one skilled in the art would understand that a well array should comprise containers of the exact same design in order to ensure the exact same method of use for each container within the well array.

Accordingly, it is submitted that the container assembly as defined by claims 1, and 13, are not taught or suggested by Gautsch. In addition, claims 2-4, 7, 9, and 10, being dependent on claim 1, claim 14 being dependent on claim 13, are likewise patentable over the cited reference.

Allowable Subject Matter

Applicants acknowledge the Examiner's allowance of Claims 15 to 33 and the allowability of claims 5, 6, 8, 11, and 12 if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

In view of the remarks herein, applicant submits the claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 02-1666.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's agent at the telephone number set forth below.

Respectfully submitted,

/Mark Lindsey/

Mark Lindsey
Registration No. 52,515
Agent for Applicant(s)
201 847 6262

Dated: October 27, 2008.

Becton, Dickinson and Company
1 Becton Drive, MC110
Franklin Lakes, New Jersey 07417-1880

Doc# 147046v1